TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 478. 261

THE UNITED STATES, APPELLANTS,

vs.

ANDREW J. FLEMING, FOR THE USE OF THE FIRST NATIONAL BANK OF PARKERSBURG, WEST VA.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 12, 1871.

Dec. 1871

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1 *Petition.—Filed Oct.* 26, 1868.

U. S. Court of Claims, December term, 1868.

ANDREW J. FLEMING, FOR THE USE OF THE First National Bank of Parkersburg, West Va., *vs.* THE UNITED STATES. } 3661.

To the honorable Court of Claims:

Your petitioner, Andrew J. Fleming, who sues for the use and benefit of "The First National Bank of Parkersburg," West Virginia, respectfully represents unto your honors:

That, in the year 1864, he was a resident of the State of West Virginia, which comprised a portion of the Military Department of West Va., then commanded by Major Gen. David Hunter, United States Army; that said Gen. Hunter, in the month of July, in said year, being in great need of horses for the service of the Army of the United States, and there existing an emergency requiring the immediate procurement of said horses for the necessary movements and operations of the Army under his command, called the "Army of West Virginia," and being unable to procure said horses from any established depot of the Quartermaster's Department, or from the head of the division charged with the duty of furnishing such horses within the required time, ordered his chief quartermaster to procure immediately, or within seven days from the date of said order, all the horses he could, not exceeding two thousand, and authorized him to pay the sum of one hundred and sixty five dollars per horse; that, in accordance with said orders, the quartermasters under Gen. Hunter proceeded to purchase horses, and bought of and from your petitioner

2 two hundred and thirty-two horses in open market, and contracted for the delivery of said number of horses, and promised and agreed to and with your petitioner, that the defendant, the United States, should pay unto your petitioner the sum of one hundred and sixty-five dollars per horse, and the full and true sum of thirty-eight thousand two hundred and eighty dollars, ($38,280,) and under said promise and agreement your petitioner delivered unto said quartermaster the said two hundred and thirty-two horses, receiving vouchers therefor at the rate of one hundred and sixty-five dollars per horse, amounting in the aggregate to thirty-eight thousand two hundred and eighty dollars, ($38,280.)

Your petitioner further avers that Gen. Hunter and his quartermasters in the matters aforesaid, were acting as the officers and agents of the defendant, the United States, and within the scope of their authorities as the commanding general of an army and a department, and the quartermasters under him, and the said horses were delivered to them as such officers and agents, and were by them so received and converted to the use of, and used by the said defendant.

Your petitioner further avers that he procured many other horses than those set forth in this petition, for sale and delivery to the said quartermasters; that he did so by purchase in different parts of the country; that to enable him to do so, he was compelled to have facility for the raising of large amounts of money; that he accordingly sold and delivered to "The First National Bank of Parkersburg," West Virginia, the said vouchers aforesaid, and received from it the money due thereon; that the same was done without endorsement, assignment, or transfer,

other than by delivery, as is the common custom of the United States, acknowledged and recognized by the defendant from time immemorial.

Your petitioner further avers that the said bank presented said vouchers to the Quartermaster General of the United States for payment; that he for a long time refused to pay them, but after the lapse of a year and more, agreed to pay and did pay the sum of one hundred and fifty dollars only, instead of the sum of one hundred sixty-five dollars.

Your petitioner avers that his vouchers were for the sum of thirty-eight thousand two hundred and eighty dollars; that there was received by said bank on said vouchers the sum of thirty-four thousand eight hundred dollars ($34,800) only, and that there is still due and owing
3 to your petitioner for the use and benefit of said bank the sum of three thousand four hundred and eighty dollars, ($3,480,) for which sum he prays judgment.

He further avers that he is a citizen of the United States; that the said bank is a corporate body under and by virtue of the laws of the United States; that its stockholders are citizens of the United States, and that neither he nor the said bank have in any way voluntarily aided, abetted, or given encouragement to any rebellion against the Government of the United States, but have always borne true allegiance thereto.

OWEN & WILSON,
Att'y for Plaintiff.

STATE OF WEST VIRGINIA, *County of Wood, ss:*

Before me, W. W. Van Winkle, notary public for the county and State aforesaid, personally appeared W. N. Chancellor, and made oath that during the year 1864 he was and now is cashier of The First National Bank of Parkersburg, West Virginia: that he is well acquainted with the voucher transaction mentioned in the foregoing petition, and that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof, or interest therein has been made, except as therein stated; that said claimant is justly entitled to the amount claimed in said petition from the United States, after allowing all just credits and offsets, and that he believes the facts therein stated to be true.

W. N. CHANCELLOR,
Cashier.

Sworn to and subscribed before me this 17th day of October, 1868.
Given under my hand and official seal the day and year aforesaid.
[SEAL.] W. W. VAN WINKLE,
Notary Public.

4 In the United States Court of Claims. December term, A. D. 1868.

ANDREW J. FLEMING, FOR THE USE, &C., *vs.* THE UNITED STATES. } No. 3661.

And the said defendants, by their Attorney General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of

thirty-four hundred & eighty dollars, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

Filed January 11, 1869.

T. LYLE DICKEY,
Assistant Attorney General.

5 In the Court of Claims of the United States.

ANDREW J. FLEMING, FOR THE USE, &C., *vs.* THE UNITED STATES. } No. 3661.

Special plea for defendants.

And the said defendants, by their Attorney General, now come, and, by leave of court, (as expressed in rule IX,) say that the said claimant ought not further to maintain said action, because—

1. While the claim presented in this petition is such as is ordinarily settled in an executive department, the petition does not set forth the decision thereon of the proper department of the Government to which application was (as is alleged) made for the payment of the claim. (Rule II.)

2. The petition does not set forth a full statement of the action, on the claim therein presented, by a department of the Government, as required by section 1 of the act of February 4, 1855.

3. The evidence in the case does not show that any such application has ever been made to any department of the Government, whether with or without success, or any action whatever thereon, without which action this court has no lawful jurisdiction in this case.

And this defendants pray judgment, &c.

THOMAS H. TALBOT,
Assistant Attorney General.

Filed January 14, 1870.

6 In the Court of Claims.

ANDREW J. FLEMING, FOR THE USE OF THE FIRST National Bank of Parkersburg, West Va., *vs.* THE UNITED STATES. }

And now, to wit, 14th of February, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Andrew J. Fleming have, and recover of and from the United States the sum of three thousand four hundred and eighty dollars no cents ($3,480 00.)

By the court:

A true copy of record.

7 In the Court of Claims, Dec. term 1869. 7

ANDREW J. FLEMING, FOR THE USE OF THE FIRST National Bank of West Virginia,
vs.
THE UNITED STATES. } 3661.

From the judgment rendered in the above-entitled cause on February 14, 1870, in favor of claimant, the defendants, by their Attorney General, on the 20th day of April, 1870, make application for, and give notice of, an appeal to the Supreme Court of the United States, the amount in controversy in said cause, exceeding three thousand dollars.

By the Ass't Att'y Gen'l,

THO'S H. TALBOT.

Filed in the clerk's office, April 20, 1870.

Ordered, that the appeal prayed in the above-entitled cause be allowed.

By the court:

APRIL 26, 1870.

8 IN THE CASE OF A. J. FLEMING, FOR the use of First National Bank of Parkersburg, West Va.,
vs.
THE UNITED STATES. } No. 3661.

And the court find the facts to be—

In July, 1864, Major Gen'l David Hunter, of the U. S. A., was in command of the military department of which West Va. was a part. To meet a pressing exigency he issued orders to his chief quartermaster on the 7th July, 1864, to procure 1,000 horses within seven days. A board of officers was designated as inspectors of these horses. The orders limited the price to $165 per head. A similar order for an addi-
9 tional 1,000 horses was issued by Gen'l Hunter on the 13th of the same month, at the same price stated before. The quartermaster procured the claimant and others to deliver the horses. They were delivered within the time specified, or very shortly thereafter. The horses delivered were all inspected by the officers detailed for that purpose, and accepted by them on behalf of the United States. Vouchers were then made out, specifying that the claimant had delivered so many horses at $165 per head, and carrying out in figures the aggregate. The certificate of the board of inspectors, and the approval of the quartermaster added to the same. To the whole was added a receipt, with blanks left for date, and the name of the paying officers, stating the amount, in words, of the aggregate of the voucher, at $165 per head, for the horses. These receipts were signed by the claimant, and others
10 who delivered horses under these orders, and for each delivery separately. The vouchers, certificates of inspection, approval of the quartermaster, and receipts were all the same, varying only in amounts, according to the number of horses delivered.

Neither Gen'l Hunter, nor his quartermaster, had been furnished with money to pay for these horses. The parties to whom these vouchers had been given procured the money on them from the banks at Parkersburg,

West Va., and various individuals, to pay for the horses to the farmers from whom they were bought. The vouchers, with the receipts in full appended, signed by the claimant, and the other contractors, were handed over to the banks, and the individuals from whom the money had been procured, to enable them to draw it from the Treasury.

11 Some of the vouchers were forwarded to Riggs & Co., and Jay Cooke & Co., and others sent direct to the Quartermaster Gen'l's Office for payment. Those sent to Riggs & Co., and Jay Cooke & Co., were also deposited in the same place for settlement and payment. They were referred to the cavalry division of that Bureau, and which reported that the price paid for the horses was too high; and stated that the market price of horses at that time was from $145 per head, to $155. The Quartermaster Gen'l thereupon referred the matter back to the cavalry division, directing that the claims should, if practicable, be settled with the holders of these vouchers, at $150 per head for the horses. The head of that division thereupon caused a deduction of $15 per head to be made. The vouchers being in his possession, the deduction was stated in red ink upon their faces—a new balance struck.

12 He also caused the sums written in the receipts, at the bottom of the vouchers to be erased and interlined instead the reduced balance, after deducting $15 per head for the horses specified in the particular voucher. He then made out checks or drafts on the Treasury for these reduced sums, and sent or handed them to the holders of the vouchers, or their agents. The payments were made at various times between the 23rd of May, 1865, and August 12th, 1865. During the time that the questions of the allowance of the vouchers was before the War Department, several officers of the banks owning part of these vouchers, as well as agents of the individual holders, demanded the payment and allowance of the vouchers, and protested against any reduction being made upon the same to the Quartermaster Gen'l and Secretary of War.

13 They gave notice to those officers that any payments of less than the face of the original vouchers would only be received in part payment; and that they would look to Congress or the Court of Claims for the balance. Those officers concurred that they would not be barred of any just demand they had to claim the balance by the adjustment ordered in the Quartermaster General's Office.

The horses were purchased under a lawful order of an authorized officer of the United States, during a pressing military exigency. The price paid was a fair and reasonable one under the circumstances, and we find no fraud in the transaction, either on the part of the officers or claimants. We also find that the alterations in and deductions from the vouchers, and the erasures and interlineations in the receipts, were

14 made after they were signed, without the consent or acquiescence of the holders. There is no proof in the record that the owners or holders of these vouchers, either expressly or impliedly, agreed to receive the reduced sums paid in full of their claims, but have always insisted upon payment of the entire sum. We further find that the plaintiff Fleming sold and delivered into the First National Bank of Parkerburg, West Virginia, vouchers issued as aforesaid for 232 horses purchased, inspected, and received as aforesaid, under the authority as aforesaid, which vouchers amounted in the aggregate to $38,280; that the United States paid to the said bank on account of said vouchers the sum of 34,800 only, and refused to pay the balance; that there is now due and unpaid on account of said vouchers the sum of $3,480,

15 for which we direct judgment to be entered in favor of the plaintiff to the use of the First National Bank of Parkersburg, West Virginia.

By the court.

16 In the Court of Claims.

ANDREW J. FLEMING FOR THE USE OF THE First National Bank of Parkersburg, West Va., *vs.* THE UNITED STATES. } No. 3661.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above entitled cause, and the final judgment of the court thereon; of the application of the Attorney General for defendants, for the allowance of an appeal, as filed in the clerk's office, April 20, 1870, and of the order of the court of 26 April, 1870, allowing the same; of the findings of fact, and the conclusions of law on said facts, on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 12th day of January, 1871.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 479. The United States, appellants, vs. Andrew J. Fleming, for the use of the First National Bank of Parkersburg, of West Va. Court of Claims. Filed 12th January, 1871.